

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: William Vainchenker et al.
Title: IDENTIFICATION OF A JAK2 MUTATION
INVOLVED IN VAQUEZ POLYGLOBULIA
Appl. No.: 10/580,458
Filing Date: 05/24/2006
Examiner: Sheridan Swope
Art Unit: 1652
Confirmation Number: 1466

INFORMATION DISCLOSURE STATEMENT
UNDER 37 CFR §1.56

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith is a letter dated May 27, 2010, and two attached documents (cited in the attached Form PTO/SB/08 as “A1” and “A2”), which Applicants submit to comply with Applicants’ duty of disclosure pursuant to 37 CFR §1.56.

The May 27 letter was sent to Applicants’ Representative by counsel for Bio-Reference Laboratories, Inc., which is in an ongoing litigation in the U.S. District Court for the District of New Jersey (Civil Case No. 2:09-cv-06017-SRC-MAS) over infringement of related U.S. Patent No. 7,429,456 (a continuation of the present application).

A1 and A2 are neither relevant nor material to patentability of the allowed claims. This, despite the allegation in the May 27 letter that A1 and A2 “anticipate”.

A1 and A2 do not anticipate the allowed claims at least because the sequences disclosed in A1 and A2 do not satisfy the limitations “consisting essentially of at least 12

consecutive nucleotides of sequence SEQ ID NO 3 or 4” and “has the functional properties of a probe or primer” for the JAK2 V617F mutation (quoting from allowed claim 8).

Applicants explained the scope of “consisting essentially of” in the Supplemental Reply 2 (see page 2, lines 12-20) filed on March 10, 2010. The Examiner’s Statement of Reasons for Allowance (see Notice of Allowability, page 4, lines 10-13) further explained the scope of the claims (e.g., “probes and primers for identifying the V⁶¹⁷F mutation”).

The May 27 letter refers to “the 15 nucleotides from 393 to 407 of SEQ ID NO: 4401” in A1. The letter also refers to “the 16 nucleotides from 202 to 217 of the sequence at the bottom of the document” in A2.

The May 27 letter does not allege that A1 and A2 relate in any way to JAK2. The cited sequences in A1 and A2 are 578 and 340 nucleotides in length, yet the letter merely alleges that 15-16 of the nucleotides in each sequence match JAK2. There is no connection between the 15-16 nucleotides within the cited sequences and the invention as claimed.

A copy of each non-U.S. patent document and each non-patent document is being submitted to comply with the provisions of 37 CFR §1.97 and §1.98.

The submission of any document herewith is not intended as an admission that such document constitutes prior art against the claims of the present application or that such document is considered material to patentability as defined in 37 CFR §1.56(b). Applicants do not waive any rights to take any action which would be appropriate to antedate or otherwise remove as a competent reference any document which is determined to be a *prima facie* art reference against the claims of the present application.

The listed documents are being submitted in compliance with 37 CFR §1.97(b), before the mailing of a first Office action after the filing of a Request for Continued Examination under §1.114.

Applicants respectfully request that each listed document be considered by the Examiner and be made of record in the present application and that an initialed copy of Form PTO/SB/08 be returned in accordance with MPEP §609.

Although Applicants believe that no fee is required, the Commissioner is hereby authorized to charge any additional fees which may be due to Deposit Account No. 19-0741.

Respectfully submitted,

Date 28-May-2010

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